

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

FILED
2008 DEC -4 AM 8:45
U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY D. A.
DEPUTY

ROBERT PETERSON,
Plaintiff,

v.

SAM'S EAST, INC. d/b/a SAM'S CLUB
and DOREL JUVENILE GROUP, INC.
a/k/a COSCO HOME & OFFICE
PRODUCTS,
Defendants.

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EP-07-CV-258-PRM

JUDGMENT

BE IT REMEMBERED that on the 10th day of October 2008 came on to be heard the above-entitled and numbered cause and the parties, appearing in person and with their attorneys of record. The jury composed of six duly and legally qualified jurors, having been impaneled, was selected, and sworn to try this said cause. The case proceeded to trial.

At the conclusion of the evidence, the Court granted Defendant Sam's East, Inc. d/b/a Sam's Club's Motion for Directed Verdict pursuant to Rule 50(a) of the Federal Rules of Civil Procedure.

At the conclusion of the evidence, and after all the parties closed, the Court submitted the case to the jury on questions. The charge of the Court, including the questions, and the unanimous verdict of the jury, are incorporated by reference herein for all purposes as if fully set forth at length. After reviewing the evidence, reading the motion and responses of the parties, reviewing the law and facts, pleadings and discovery responses, the Court finds that Plaintiff Robert Peterson is entitled to Judgment against Defendant Dorel Juvenile Group, Inc. only.

After receiving the verdict, the Court ordered it filed and the Court then discharged the

jury.

The jury having found answers to questions as follows:

QUESTION ONE

WAS THERE A DESIGN DEFECT IN THE LADDER AT THE TIME IT LEFT THE POSSESSION OF DOREL JUVENILE GROUP, INC. THAT WAS A PRODUCING CAUSE OF THE INJURY IN QUESTION?

ANSWER: YES

QUESTION TWO

WAS THERE A MANUFACTURING DEFECT IN THE LADDER THAT WAS A PRODUCING CAUSE OF THE INJURY IN QUESTION?

ANSWER: YES

QUESTION THREE

WAS THERE A DEFECT IN THE MARKETING OF THE LADDER AT THE TIME IT LEFT THE POSSESSION OF DOREL JUVENILE GROUP, INC. THAT WAS A PRODUCING CAUSE OF THE INJURY IN QUESTION?

ANSWER: YES

QUESTION FOUR

WHAT SUM OF MONEY, IF PAID NOW IN CASH, WOULD FAIRLY AND REASONABLY COMPENSATE ROBERT PETERSON FOR HIS INJURIES, IF ANY, THAT RESULTED FROM THE OCCURRENCE IN QUESTION?

a: Reasonable and necessary medical care in the past

\$92,552.90

b: Loss of earning capacity sustained in the past

\$15,000.00

c: Physical pain and mental anguish sustained in the past

\$100,000.00

- d: Physical pain and mental anguish that, in reasonable probability will be incurred in the future
\$150,000.00
- e: Physical impairment in the past
\$100,000.00
- f: Physical impairment which in reasonable probability will be incurred in the future
\$150,000.00
- g: Disfigurement in the past
\$0
- h: Disfigurement which in reasonable probability will be incurred in the future
\$0

The Court further finds the past medical expense award should be reduced from \$92,552.90 to \$42,754.63 pursuant to section 41.0105 of the Texas Civil Practice and Remedies Code.

The Court further finds that Plaintiff Robert Peterson is entitled to pre-judgment interest from the Defendant Dorel Juvenile Group, Inc. The Court finds that of the total verdict, \$257,754.63 is subject to pre-judgment interest. There is a total of \$18,890.24 pre-judgment interest at 5% per annum from June 5, 2007, the day Plaintiff Robert Peterson filed his Original Petition through November 21, 2008. Additional pre-judgment interest is accruing on this sum at the rate of \$35.31 per day.

Accordingly, **IT IS ORDERED** that Plaintiff Robert Peterson does have and will recover judgment from and against Defendant Dorel Juvenile Group, Inc. for his actual damages and pre-judgment interest in the total sum of \$576,644.87, plus \$35.31 for every day after November 21, 2008, until the day this judgment is signed.

IT IS FURTHER ORDERED that the total Judgment accrue interest at the lawful rate of interest from the day after it is signed, until paid in full by Defendant Dorel Juvenile Group, Inc.

IT IS FURTHER ORDERED that Plaintiff Robert Peterson's claim against Defendant Sam's East, Inc. d/b/a Sam's Club is hereby **DENIED** and judgment is rendered against Plaintiff Robert Peterson and in favor of Defendant Sam's East, Inc. d/b/a Sam's Club with respect to all claims against Defendant Sam's East, Inc. d/b/a Sam's Club.

The Court will award costs of court, if any, by separate order.

All writs and processes for enforcement and collection of this Judgment and the costs of court may issue as necessary.

All relief requested which is not expressly granted is denied. Let execution issue.

SIGNED this 3 day of December, 2008.


PHILIP R. MARTINEZ
UNITED STATES DISTRICT JUDGE